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U.S. Department of Homeland Security
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Washington, DC 20536



**U.S. Citizenship
and Immigration
Services**

MJ

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: **MAY 11 2004**

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Cindy N. Gomez for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director determined that the applicant failed to submit evidence to establish that he was eligible for filing after the initial registration period from March 9, 2001 through September 9, 2002. The applicant properly filed his TPS application on September 21, 2002. The director, therefore, denied the application.

8 C.F.R. § 103.3(a)(2)(v)(B) states:

Untimely appeal--(1) Rejection without refund of filing fee. An appeal which is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

(2) Untimely appeal treated as motion. If an untimely appeal meets the requirements of a motion to reopen as described in § 103.5(a)(2) of this part or a motion to reconsider as described in § 103.5(a)(3) of this part, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

The applicant, on appeal, states he is the spouse of a TPS registrant. He submits a copy of an Employment Authorization document for his spouse, as well as a Certificate of Marriage Registration, for a marriage that took place on May 17, 2003, after the initial registration period of January 5, 1999 through August 20, 1999. The applicant has not met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Therefore, the applicant's statement on appeal does not meet the requirements of a motion.

Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.5a(b).

The decision, dated March 27, 2003, clearly advised the applicant that any appeal must be filed within thirty days. Coupled with three days for mailing, the appeal in this case should have been filed on or before April 29, 2003. The record reflects that the applicant's Form I-290B, Notice of Appeal, was initially received on May 2, 2003. However, the applicant did not include the filing fee and the appeal was rejected and returned to the applicant on May 5, 2003. The applicant did not return the Form I-290B and the proper filing fee until May 22, 2003.

Based on the applicant's failure to file a timely appeal, the appeal will be rejected.

ORDER: The appeal is rejected.